

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMARIS JONTUAN HOGAN,

Defendant-Appellant.

UNPUBLISHED

June 30, 2011

No. 297299

Oakland Circuit Court

LC No. 2009-227938-FC

Before: METER, P.J., and CAVANAGH and SERVITTO, JJ.

PER CURIAM.

Defendant appeals as of right his jury convictions of larceny from a person, MCL 750.357, felon in possession of a firearm, MCL 750.224f, two counts of possession of a firearm during the commission of a felony, MCL 750.227b, carrying a concealed weapon, MCL 750.227, possession of less than 25 grams of cocaine, MCL 333.7403(2)(a)(v), possession of marijuana, MCL 333.7413(2)(b), and resisting or obstructing a police officer, MCL 750.81d(1). We affirm.

The prosecution's theory at trial was that defendant stole the complainant's Vicodin pills at gunpoint, and later resisted the police by fleeing from his vehicle. At the time of defendant's arrest, a firearm and narcotics were recovered from his vehicle. At trial, defendant testified that the complainant willingly gave him the pills, and that he ran from the police because he was on probation. Defendant was charged with multiple offenses arising from the incident. Of relevance to this appeal, defendant was charged with armed robbery and the jury was instructed on the lesser offenses of unarmed robbery and larceny from a person. The jury convicted defendant of larceny from a person. On appeal, defendant argues that there was insufficient evidence to support the larceny conviction because he did not take the Vicodin pills without the complainant's consent, and that the jury should not have been instructed on the lesser offense of larceny.

In ascertaining whether sufficient evidence was presented at trial to support a conviction, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441

Mich 1201 (1992). Circumstantial evidence and reasonable inferences arising from the evidence can constitute satisfactory proof of the elements of the crime. *People v Truong (After Remand)*, 218 Mich App 325, 337; 553 NW2d 692 (1996). “[A] reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury’s verdict.” *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

The elements of larceny from a person are: “(1) the taking of someone else’s property without consent, (2) movement of the property, (3) with the intent to steal or permanently deprive the owner of the property, and (4) the property was taken from the person or the person’s immediate area of control or immediate presence.” *People v Perkins*, 262 Mich App 267, 271-272; 686 NW2d 237 (2004).

The evidence showed that the complainant, who was disabled and confined to a wheelchair, agreed to sell his prescribed Vicodin to defendant because he was in need of money. Defendant came to the complainant’s home to purchase the Vicodin. The complainant refused defendant’s request to exchange the Vicodin for crack cocaine, and the complainant asked for the money. Defendant pulled some money from his pocket and asked to see the pill bottle. Defendant read the label on the bottle, but instead of paying the complainant the money that he had exposed, defendant pocketed both the money and the complainant’s Vicodin, brandished a gun, and fled with the complainant’s Vicodin.

Viewed in a light most favorable to the prosecution, the evidence was sufficient to enable a rational trier of fact to find beyond a reasonable doubt that defendant took the complainant’s Vicodin without his consent. The evidence showed that the complainant agreed to depart with the pill bottle only in exchange for money, and that the complainant demanded money for the pills. Defendant admitted that he took the pills without paying any money. Further, the evidence supported an inference that the complainant’s disability and confinement to a wheelchair limited his ability to impede defendant’s actions. Although defendant suggests alternative ways of viewing the evidence, it was up to the trier of fact to evaluate the evidence and, for purposes of resolving defendant’s sufficiency challenge, we are required to view the evidence in a light most favorable to the prosecution. The evidence was sufficient to support defendant’s conviction of larceny from a person.

Further, the trial court did not abuse its discretion by instructing the jury on larceny from a person. *People v Gillis*, 474 Mich 105, 113; 712 NW2d 419 (2006). MCL 768.32 permits instruction on necessarily included lesser offenses. *People v Reese*, 466 Mich 440, 446; 647 NW2d 498 (2002). Larceny from a person is a necessarily included lesser offense of armed robbery, distinguished by the element of the use of a dangerous weapon and force or threat of violence. *People v Beach*, 429 Mich 450, 484 n 17; 418 NW2d 861 (1988); *People v Bart (On Remand)*, 220 Mich App 1, 14; 558 NW2d 449 (1996). Therefore, a requested instruction on larceny from a person is proper if a rational view of the evidence would support it. *People v Cornell*, 466 Mich 335, 357; 646 NW2d 127 (2002). In this case, the complainant testified that defendant pointed a gun as he stole the Vicodin, causing the complainant to become very frightened. In contrast, defendant testified that he did not possess any weapon, and simply took

the Vicodin and left. Because the evidence varied on the disputed factual element of whether a weapon and force or threat of violence was used, the trial court did not err in providing the requested instruction on larceny from a person.

Affirmed.

/s/ Patrick M. Meter
/s/ Mark J. Cavanagh
/s/ Deborah A. Servitto